



CIRCUIT COURT OF THE STATE OF OREGON
FOURTH JUDICIAL DISTRICT
MULTNOMAH COUNTY COURTHOUSE
1021 S.W. FOURTH AVENUE
PORTLAND, OR 97204-1123

NAN G. WALLER
PRESIDING JUDGE

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May 27, 2015

Written Testimony in Support of Passage of SB 391A

I am writing to express my support of SB 391 A without further amendments. The A Engrossed version of this bill will eliminate the questionable practice of seizing security release funds without a court order or warrant, and without due process. The A Engrossed version of SB 391 requires the court clerk to accept security funds during regular business hours, and permits the use of cashier's checks, money orders, credit cards, in addition to cash.

Oregon civil forfeiture law and Oregon's constitution have clear restrictions and processes for when agencies may seize property that is an instrumentality of or proceeds of prohibited conduct. Jail personnel act as clerks of the court when they accept security funds in exchange for a defendant's release. They act contrary to their delegated authority when they delay acceptance of funds being posted for security release in hopes of developing probable cause for the seizure after the fact. I have reason to believe that the practice has occurred based upon information I have received. This bill will eliminate the possibility of this improper practice occurring.

By requiring the clerk to accept the security funds and expanding the forms of security accepted, the bill ensures that agencies are not seizing property before meeting Constitutional and statutory constraints of notice, a claim process, and the meeting of the burden of proof by the agency or the claimant. As the Oregon Property Protection Act of 2000, Or. Const. Article XV, Sec. 10, states: "A basic tenet of a democratic society is that a person is presumed innocent and should not be punished until proven guilty." Seizing security funds from a third party who presents to bail out a defendant without a court order or a warrant turns this tenet on its head. There should be no "short-cut."

In addition, the seizing clerk is frustrating the framework the courts have adopted for hundreds of years to allow release of a defendant upon presentation of bail. Access to justice must be preserved, and that includes the process of posting bail and release. When a third party presents to the jail with cash to bail out a family member or friend, and their money is seized without process, that person has less faith in the justice system. We must have a society that has faith and confidence in the justice system.